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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL

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August 22, 1997

VIA MESSENGER

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 87-268
Ex Parte Comments

Dear Mr. Caton:

In accordance with the provisions of Section 1.1206(a)(1) of the Commission's rules, transmitted herewith in duplicate are the *Ex Parte* Comments of Diversified Communications in the above-referenced proceeding concerning digital television.

Should you have any questions, please contact the undersigned.

Very truly yours,



Elizabeth A. Sims

Enclosure

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AUG 22 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Advanced Television Systems) MM Docket No. 87-268
and Their Impact Upon the)
Existing Television Broadcast)
Service)

To: The Commission

COMMENTS OF DIVERSIFIED COMMUNICATIONS

Diversified Communications ("Diversified"), licensee of Station WABI-TV, Bangor, Maine ("WABI" or the "Station"), by its attorneys, hereby submits these comments regarding the Petition for Reconsideration of the FCC's *Sixth Report and Order* in the above-referenced proceeding,¹ which was filed on June 13, 1997, by Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network ("TBN"). WABI currently broadcasts over NTSC Channel 5 in Bangor, Maine. The Station was allotted digital Channel 19 by the FCC in the *Sixth Report and Order*. Because TBN's Station W19BL, Dover, Maine, currently operates on NTSC Channel 19, and will thus may be displaced by WABI's move to digital operation on the same channel, TBN proposed in the Engineering Statement to its Petition for Reconsideration, *inter alia*, that WABI's digital allotment be changed from Channel 19 to Channel 31. Diversified strongly opposes this digital channel change as it would (1) force WABI to expend additional

¹ *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Sixth Report and Order*, MM Docket No. 87-168, FCC 97-115 (released April 21, 1997).

financial and other resources in its transition to digital operation, and (2) place WABI at a substantial competitive disadvantage with respect to its market competitors. The burden of making accommodations that ensure the continued operation of TBN's secondary stations should be on TBN, not on the full power stations in the Bangor market like WABI. TBN has made no showing whatsoever that it has even attempted to use the options provided by the FCC in the *Sixth Report and Order* that would enable it to shoulder this burden before forcing it onto WABI and others serving the same market. Thus, its Petition for Reconsideration should be denied.

A. Additional Expenditure of Resources

There are three commercial full power stations licensed to the Bangor, Maine market: (1) WLBZ-TV, which operates on NTSC Channel 2; (2) WABI-TV, which, as stated above, operates on NTSC Channel 5; and (3) WVII-TV, which operates on NTSC Channel 7. There is also one noncommercial public television station in the market, WMEB-TV, licensed to Orono, Maine, which is just north of Bangor. These four full power stations are currently evaluating whether they can collocate their respective digital transmitter facilities at one central tower site in the area in order to reduce significantly the amount of money each station will have to spend on capital and operating expenditures in its transition to digital operation. This evaluation, which is quite costly and time-consuming, is being performed under the assumption that the digital allotments adopted in the *Sixth Report and Order* are the channels on which the stations will operate after the transition to digital operation. If TBN's proposed changes in the allotment table are granted,² the allotments for two of the four full power stations in the Bangor area will be changed and the

² TBN also proposed to move WVII's digital operation from Channel 14 to Channel 36.

technical study currently being performed will have to be restarted with new information, at great expense to WABI and the other three full power stations involved. In addition to the additional monetary expense, it is very likely that such a reevaluation would cause a substantial delay in the Bangor full power stations' transition to digital television. Such a result will harm not only the stations themselves as cited above but is also against the public interest of the residents of the Bangor market area who will be denied higher quality digital service for a prolonged period of time.

Moreover, it is important to recognize that while all four Bangor full power stations will clearly suffer economically from the substantial expense of this reevaluation, WMEB, the area's public television station, will potentially be harmed to an even greater extent by TBN's proposal because it is run noncommercially. A persistent shortage of funding for public television stations forces those stations to conserve money spent on capital and operating expenditures, which is presumably one of the primary reasons WMEB is attempting to join the Bangor commercial full power stations in collocating their respective digital operations. Loss of the capital and operating savings that will be provided by the collocation of the facilities of the Bangor stations will delay, and may even preclude, WMEB's transition to digital television. On the other hand, maintaining the digital allotment table adopted by the FCC in the *Sixth Report and Order* will allow public television stations like WMEB as well as commercial stations to rely on the stability of those allotments in planning for the transition to digital. Otherwise, full power stations will be continually called upon to expend resources, financial and otherwise, to move their digital operations in order to fully accommodate low power stations like TBN's which hold secondary status and should not take priority over the full power stations in the market..

B. Competitive Disadvantage

As stated above, there are three full power stations licensed to the Bangor, Maine market: (1) WLBZ-TV, which operates on NTSC Channel 2; (2) WABI-TV, which, as stated above, operates on NTSC Channel 5; and (3) WVII-TV, which operates on NTSC Channel 7. Thus, currently, WABI enjoys a competitive advantage as a result of its operation on a channel between the other two broadcast signals in the market. Notably, a viewer must literally pass over WABI's programming on Channel 5 when scanning Bangor area broadcast stations on his or her television set, regardless of whether the viewer scans consecutively from Channel 2 up to Channel 7 or scans in reverse from Channel 7 to Channel 2. Thus, WABI has found that its NTSC channel positioning gives it an important market advantage over its competitors.

In the *Sixth Report and Order*, the FCC allotted digital channels to the Bangor stations as follows: (1) WLBZ - Channel 25; (2) WABI - Channel 19; and (3) WVII - Channel 14. Therefore, even after the transition to digital television, WABI will maintain its channel position between the other two broadcast stations in its market and any market advantage that it receives as a result of such positioning. TBN proposes that WABI move its digital operation to less desirable Channel 31 instead and that WVII move its digital operation to Channel 36. This change would put both WABI and WVII at an extreme competitive disadvantage to market competitor WLBZ, which would presumably maintain its digital channel positioning at Channel 14.

While WABI cannot speak for WVII, this change in digital channel allotment is unacceptable to WABI. Essentially, TBN is asking the Commission to move the digital operations of two of the three full power television stations in the Bangor market to much less

desirable channels so that TBN can maintain the operations of two of its low power stations on the two more desirable channels that WABI and WVII have been forced to abandon. While Diversified is not without sympathy for TBN's efforts to prevent its low power and translator stations from displacement, TBN has not addressed whether it has attempted to avail itself of any of the operational and technical options provided by the FCC in the *Sixth Report and Order* for licensees of low power stations in order to protect their stations from displacement.³ Neither has TBN addressed why it cannot (or will not) propose its own move to a different channel. Instead, TBN has placed the burden on two of the three full power stations in the Bangor market to move their digital operations to less desirable channels in order to accommodate TBN's existing operations. Placing such a priority on secondary stations like W19BL at the expense of full power television stations like WABI is clearly contrary to the Commission's rules regarding the secondary status of low power television stations and the provisions of the *Sixth Report and Order* which give certain remedies to such stations in the event they interfere with or are displaced by a full power station. Thus, TBN's Petition for Reconsideration must be denied.

C. Conclusion


For the above reasons, Diversified hereby opposes the proposal set forth in TBN's Petition for Reconsideration with respect to WABI and respectfully requests that the Commission disregard and deny TBN's suggestion to allot digital Channel 31 to WABI instead

³ As stated in the *Sixth Report and Order* at ¶¶ 141-147, and cited in the Joint Opposition to Petition for Reconsideration ("Joint Opposition") filed by the Board of Regents of the University of Wisconsin, *et. al.*, in this proceeding, these options include: (1) allowing displaced stations to apply for suitable replacement channels; (2) considering such applications on a first-come, first-served basis without subjecting them to competing applications; and (3) technical rule changes that provide additional operating flexibility. Joint Opposition at 7.

of digital Channel 19. While Diversified is sympathetic to TBN's plight, WABI, a full power television station in the Bangor market, should not be required to bear the burden of ensuring the continued operation of TBN's secondary stations or suffer competitively with respect to its full power competitors. Instead, TBN should bear the burden of using the options specifically provided by the FCC to help protect low power stations faced with this type of circumstance. As TBN has apparently not yet explored these other options, Diversified respectfully requests that the Commission consider these comments and deny TBN's Petition for Reconsideration.

Respectfully submitted,

DIVERSIFIED COMMUNICATIONS

By: 
Alan C. Campbell
Elizabeth A. Sims

Its Attorneys

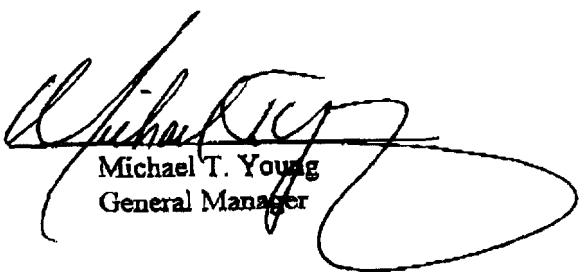
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August 22, 1997

DECLARATION OF MICHAEL T. YOUNG

I, Michael T. Young, General Manager of Station WABI-TV, Bangor, Maine, under penalty of perjury, do hereby declare that I have read the foregoing "Comments of Diversified Communications" and that the facts stated therein are true and correct to the best of my knowledge, information and belief.

Date:

8/22/97
Michael T. Young
General Manager

CERTIFICATE OF SERVICE

I, Vanessa N. Duffy, hereby certify that on this 22nd day of August, 1997, copies of the foregoing "Comments of Diversified Communications" have been served by U.S. first-class mail, postage prepaid, or by messenger service upon the following:

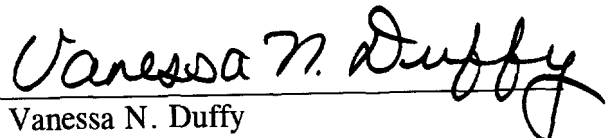
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